

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DK LIPA LLC,

Plaintiff,

-against-

MISF SOLAR LLC, PROJECT NY LLC, MASTIC
INDUSTRIAL SOLAR LLC, GERALD
ROSENGARTEN, HOWARD ROSENGARTEN,
SION SOHAYEGH, BIJOUN KAYPOUR, ARTUR
MADEJ, THOMAS FALZ, ULRICH FALZ, and
MARKUS FALZ,

Defendants.
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No: 20-cv-4273 (LGS) (DCF)

**DECLARATION OF
JAMES M. WICKS IN
SUPPORT OF DEFENDANTS'
CONSOLIDATED MOTION
TO DISMISS**

I, **JAMES M. WICKS**, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746,
the following to be true and correct to the best of my knowledge:

1. I am a member of the law firm of Farrell Fritz, P.C., attorneys for Project NY, LLC,
Thomas Falz, Ulrich Falz and Markus Falz, each of whom is a defendant in the above-referenced
action (the "Action").

2. I respectfully submit this Declaration in support of the consolidated motion of
defendants MISF Solar, LLC, Mastic Industrial Solar, LLC, Gerald Rosengarten, Howard
Rosengarten, Sion Sohayegh, Bijoun Kaypour, Ulrich Falz and Markus Falz (collectively,
"Defendants") for an Order, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure,
dismissing the Complaint ("Complaint") of plaintiff DK LIPA ("Plaintiff").

3. Attached as Exhibit "A" is a true copy of the Complaint, together with the annexed
exhibits, filed on June 4, 2020.

4. Attached as Exhibit "B" is a true copy of the Right of First Offer Agreement
("ROFO Agreement") between Plaintiff and non-party SB Energy Holdings, LLC ("SBE"), dated
October 11, 2013.

5. Attached as Exhibit “C” is a true copy of the Letter of Intent (“LOI”) between non-parties SBE and MISF, LLC, dated November 14, 2016.

Dated: Uniondale, New York
November 23, 2020

/s/ James M. Wicks
James M. Wicks